

**POWELL, TRACHTMAN, LOGAN, CARRLE
BOWMAN & LOMBARDO, P.C.**

By: Jonathan K. Hollin
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HIGHWAY MATERIALS, INC. : **CIVIL ACTION**

v. :

WHITEMARSH TOWNSHIP, :
MONTGOMERY COUNTY, PA; THE :
BOARD OF SUPERVISORS OF :
WHITEMARSH TOWNSHIP, :
MONTGOMERY COUNTY, PA; :
ANN D. YOUNGLOVE, :
INDIVIDUALLY AND IN HER :
CAPACITY AS CHAIRMAN OF THE :
BOARD OF SUPERVISORS; RONALD :
J. DEROSA, INDIVIDUALLY AND IN :
HIS CAPACITY AS VICE CHAIRMAN; :
WILLIAM P. RIMEL, III, :
INDIVIDUALLY AND IN HIS :
CAPACITY AS SUPERVISOR; PETER :
B. CORNOG, INDIVIDUALLY AND IN :
HIS CAPACITY AS SUPERVISOR; :
MICHAEL A. ZEOCK, INDIVIDUALLY:
AND IN HIS CAPACITY AS SUPER-
VISOR and THOMAS F. ZARKO,
INDIVIDUALLY AND IN HIS
CAPACITY AS TOWNSHIP ENGINEER:

NO. 02-3212

THOMAS ZARKO'S ANSWER TO PLAINTIFF'S MOTION TO COMPEL

1. Admitted. By way of further answer, 84 Document Requests were served.
2. Admitted.

3. Admitted.

4. The corresponding allegation is a conclusion of law to which no response is required.

5. Admitted.

6. Admitted. By way of further answer, counsel for Zarko asked for an extension of time to respond to the discovery responses. Counsel for Plaintiff, HMI, did not return the call.

7. Admitted.

8. Denied. On February 11, 2003 Zarko served his answers to the Interrogatories including Bate stamped copies of 174 documents referenced in the Answers to Interrogatories. On February 14, 2003 Zarko served, via facsimile, Plaintiff's counsel with his formal Response to the Document Request. It should be noted that the Document Requests contained 84 separate Requests

Additional Information

1. Plaintiff, HMI did not attach its Discovery Requests to its Motion to Compel. It is submitted that a review of same by the Court, especially the 84 separate Document Requests, would reveal same to be generally overly broad and unduly burdensome, especially given the fact that Plaintiff made no effort in its Discovery Requests to differentiate those directed to Tom Zarko, the Township Engineer, as opposed to those directed to the Township itself. Nevertheless, Zarko has now fully responded to both the Interrogatories and Document Requests and Plaintiff has been prejudiced in no way, shape or form. This is especially so given it was Zarko's understanding that with rare exception, any documents being sought from him would be contained within the Township's files which, Zarko understood were to be inspected by Plaintiff's

counsel a couple of weeks ago. Moreover, in an abundance of caution, it was necessary for Zarko's counsel to allow counsel for the Township to review the Answers prior to same being served on Plaintiff to allow him to assert any necessary privilege given the fact that Tom Zarko, as the Township Engineer, is often involved with the Township Solicitor in matters in litigation.

2. Given the above, Plaintiff's Motion should be denied as moot.

WHEREFORE, Defendant Thomas Zarko respectfully requests that this Honorable Court issue an Order denying as moot the Plaintiff's Motion to Compel.

Respectfully submitted,

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARD, P.C.**

Dated: February 18, 2003

By: _____
Jonathan K. Hollin, Esquire
Attorney for Defendant Thomas Zarko

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B. CORNOG, INDIVIDUALLY AND IN :
HIS CAPACITY AS SUPERVISOR; :
MICHAEL A. ZEOCK, INDIVIDUALLY: :
AND IN HIS CAPACITY AS SUPER- :
VISOR and THOMAS F. ZARKO, :
INDIVIDUALLY AND IN HIS :
CAPACITY AS TOWNSHIP ENGINEER:

NO. 02-3212

ORDER

AND NOW, this ____ day of _____, 2003, upon consideration of Motion of Plaintiff Highway Materials, Inc. to compel Defendant Thomas Zarko to Answer Interrogatories and Produce Documents and the Response thereto, the Court having been advised that the Interrogatories have been answered and the Document Requests responded to, it is hereby ORDERED and DECREED that said Motion is DENIED AS MOOT.

BY THE COURT:

J.

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NO. 02-3212

CERTIFICATE OF SERVICE

I, Jonathan, K. Hollin, Esquire, counsel for Thomas F. Zarko, P.E., certify that a true and correct copy of the foregoing Defendant Thomas Zarko's Response to Plaintiff's Motion to Compel was forwarded to opposing counsel by U.S. Mail, postage prepaid, to the addresses below:

Michael Sklaroff, Esquire
Ballard Spahr Andrews & Ingersoll
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350 Sentry Parkway, Building 640
Blue Bell, PA 19422-0765

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: _____
Jonathan K. Hollin, Esquire
Attorneys for Defendant, Thomas Zarko

Date: February 18, 2003